

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ORDER

Criminal File No. 06-16(2) (MJD/AJB)

(2) LUCIO GARDUNO GARCIA,

Defendant.

W. Anders Folk, Esq., Assistant United States Attorney, Counsel for Plaintiff.
Kevin M. O'Brien, Esq., Counsel for Defendant.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Arthur J. Boylan dated February 28, 2006. Plaintiff Luico Garduno Garcia filed objections to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.1(c). Based on that review the Court adopts the Report and Recommendation dated February 28, 2006. The Court further notes that there is no evidence that Garcia had a possessory interest in apartment #15; thus, he does not have standing to contest that search. United

States v. Mendoza, 281 F.3d 712, 715 (8th Cir. 2002) (noting factors that have been identified as relevant to showing an expectation of privacy are: possessory interest in the place searched; whether the party can exclude others from that place; whether the party took precautions to maintain the privacy; and whether the party had a key to the premises). The Defendant has not shown a possessory interest in apartment #15, that he made efforts to exclude others from the unit or secured the unit, or that he had a key to the unit.

Accordingly, based upon the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The Magistrate Judge's Report and Recommendation dated February 28, 2006, [Docket No. 58] is hereby **ADOPTED**.
2. Defendant Luico Garduno Garcia's Motion for Severance of Defendants [Docket No. 39] is **DENIED**;
3. Defendant Pineda's Motion to Suppress Evidence Obtained as a Result of Search and Seizure [Docket No. 42] is **DENIED**.

Dated: May 12, 2006

s / Michael J. Davis
Judge Michael J. Davis
United States District Court